

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 07.06.2016

Judgment Pronounced on 22.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.651 of 2014

Rajiv Gandhi

Appellant/Accused

vs.

State, by

The Inspector of Police,
Gingee Police Station,
Villupuram District .
Crime No.252 of 2006

Respondent/Complainant

Criminal Appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 30.08.2012 passed by the learned I
Additional District and Sessions Judge, Tindivanam in S.C.No.192
of 2006.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

V.BHARATHIDASAN, J.

The appellant in this appeal is sole accused in Sessions Case No.192 of 2006, on the file of the learned Ist Additional District and Sessions Judge, Tindivanam. He stood charged for an offence under Sections 302 IPC. The Trial Court by judgement dated 30.08.2012 convicted the appellants/accused for the offence under Section 302 of IPC, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

(i) The deceased one Lalitha aged about 20 years is the second daughter of P.Ws.1 and 2. The accused is close relative to her. The accused wants to marry the deceased. Since the accused is leading a wayward life, the deceased and her parents, viz., P.Ws.1 and 2 refused for the same. One day prior to the occurrence, the accused himself met the deceased and compelled her to marry him, but, she refused, so, there was a quarrel between them. During the quarrel, the accused threatened her that if she refused to marry him he will kill her. On 09.05.2006, after watching the T.V. serial, the deceased, P.Ws.1 and 2, and her neighbour P.W.3 were sleeping in the house and at about 1.00 a.m., in the midnight, the accused came through a small lane and attacked the deceased with knife. On hearing the noise of the deceased, P.Ws.1 and 2 woke up and they saw the accused running and they chased the accused, but he ran away. Immediately, P.W.1 has given a complaint Ex.P1 before the respondent Police.

(ii) P.W.17, the Sub Inspector of Police, working in the Gingee Police Station, received the complaint and registered the case in Crime No.252 of 2006 for an offence under Section 302 of IPC and prepared First Information Report Ex.P21 and sent the same to the Higher Officials and the Judicial Magistrate Court, Gingee. On receipt of the FIR, P.W.18, the Inspector of Police, working in the Gingee Police Station, commenced the investigation. He went to the scene of occurrence, prepared Observation Mahazar Ex.P.6, drew a Rough Sketch Ex.P23 in the presence of witnesses, namely, P.Ws.11 and 12 and other witnesses. He conducted inquest over the dead body in the scene of occurrence in the presence of panchayatars between 8.00 a.m., and 10.00 a.m. and prepared inquest report Ex.P22. Thereafter, he sent the dead body to the Government Hospital, Gingee for post mortem through P.W.5 Head Constable. In the scene of occurrence, he seized M.O.1 knife, M.O.2 Blood stained soil, M.O.3 sample soil, M.O.4 Bed sheet, M.O.5 Dhuppatta and M.O.6 a button under Ex.P7, seizure mahazar.

(iii) P.W.7, the Assistant Surgeon, working in the Government Hospital, Gingee, conducted post mortem autopsy on the dead body and found the following injuries.

Body of a female lying on it's back with limbs extended. Eyes closed. Mouth closed. Teeth completed.

External Injuries:

Deep incised wound across the neck extending from 6 cm below Right ear passing in front of neck at the level below hyoid bone to the left side of neck up to 4 cm

below left ear. Wind tube cut. Neck major vessels, muscle cut, wound size 18 cm Horizontal and 10 cm vertical.

Internal Examination:

Skull No# meaning intact. Brain longes teep. Neck Hyoid bone preserved. Thorax: Rib cage intact. No#Long, heart pale, c/s blood clat present in Right verticle. Left verticle empty. Abdomen: Stomach contains undigested rice particle with blood clot of 300 gms. Present intestine, distended with gas. Liver, Spleen, Kidney. Pale. Urinary Bladder 50 ml of urine present. Uterus - Size Normal. No pregnant. Vagina NAD.

He issued the Post-mortem Certificate Ex.P3.

(iv) Then, P.W.18, the Inspector of Police examined the post mortem Doctor and recorded his statement. On 15.05.2006 at about 7.00 a.m., he arrested the accused in the presence of P.Ws.11 and 12 and on such arrest, the accused has given a confession statement and based on the disclosure statement, he recovered M.O.7 Black colour Pant, M.O.8 Full hand shirt, M.O.9 three photos and negative, M.O.10 Black colour chudidhar and M.O.11 Blood stained chudidhar under Mahazar Ex.P8 in the presence of witnesses. Thereafter, he examined the witnesses and recorded their statement and on completion of investigation, on 02.07.2006 he filed the final report before Judicial Magistrate Court.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 18 witnesses were examined and 24 documents and 11 material objects were marked.

4. Out of 18 witnesses, P.W.1 is the father of deceased. According to him, the accused wants to marry his daughter, but P.W.1 and the deceased refused. On 09.05.2006, after watching a T.V. serial "Kolungal", the deceased and P.W.3 one Manonmani, who is her neighbour, were sleeping in the veranda and P.Ws.1 and 2 and their son one Dhanaraj were sleeping near by. At about 1.00 am., the deceased came through a small lane and attacked the deceased with knife by closing her mouth with her clothes. Thereafter, the accused ran away from the scene place. Immediately, he went to the police station and lodged a complaint Ex.P.1. P.W.2 is the mother of the deceased. In her evidence, she has stated that the accused wanted to marry the deceased, but she refused, since the accused was leading a wayward life. On 09.05.2006, after watching a T.V.

Serial, the deceased and P.W.3 one Manonmani, who is a neighbour, were sleeping in the veranda and she and her husband and son were sleeping near to the deceased. In the midnight, hearing the noise of the deceased, they wake up and she saw the accused running from the house and they chased but he escaped. P.W.3 is the neighbour of the deceased sleeping with the deceased who is also an eye witness to the occurrence. On the date of occurrence, she was sleeping with the deceased, hearing the noise of the deceased, she wake up and she saw the accused running away from the house, P.W.1 and 2 chased the accused but he escaped. P.W.4 spoke about the motive. According to her, on the previous day, the accused came to the house of the deceased and compelled her to marry him, but she refused, there was a quarrel between them and the accused threatened to murder the deceased. P.W.6 is the husband of the deceased's sister Vanitha. He also spoke about the motive. P.W.7 is the post mortem Doctor, who conducted post mortem autopsy on the dead body of the deceased and gave post mortem report Ex.P3. P.W.8 is the sister of the deceased, who also spoke about the motive. P.W.9 is the resident near by the house of the deceased. He also spoke about the motive. P.W.10 is the neighbour of the deceased, who saw the deceased after the occurrence. P.W.11 is the Village Administrative Officer, Vallam Village. He was witness to the observation mahazar, arrest and confession statement of the accused and also recovery of material objects. P.W.12, who is village menial, is the witness to the mahazar, arrest and recovery. P.W.13 is the photographer who took the photograph of the dead body. P.W.14 is the Police Constable, working in Gingee Police Station. He submitted the FIR to the Higher Officials and to the Judicial Magistrate Court. P.W.15 is the Police Constable, working in Gingee Police Station. He has taken the dead body to the Government Hospital for post mortem. P.W.16 is the Head Clerk, working in Judicial Magistrate Court, Gingee, who sent the material objects for chemical examination. P.W.17 is the Special Sub Inspector of police, working in Gingee Police Station, who registered the FIR Ex.P21. P.W.18 is the Investigating Officer, who conducted the investigation and filed the final report before the Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not examine any witness, but marked the arrest memo Ex.D1.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.R.Sankarasubbu, learned counsel appearing for the appellant Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned counsel appearing for the appellant would submit that there is a long delay in filing the FIR. The occurrence is said to have taken place at about 1.00 a.m. on 09.05.2006, and complaint was given only at 6.00 am., and there is a delay at 5 hours in filing the FIR. He further submitted that apart from that the FIR was reached the Judicial Magistrate Court only at about 11.00 am., on 09.05.2006 and the delay was not properly explained by the prosecution and hence it creates more doubt on the case of prosecution. He further submitted that P.W.1 is father of the deceased, who is author of the FIR, but he could not identify the signature in the FIR. The learned counsel appearing for the appellant further submitted that as per the post mortem certificate, there are semi undigested rice particles in the stomach of the deceased. But, according to the prosecution, after having dinner, the deceased was watching the T.V. Serial and went to bed room and the occurrence took place at about 1.00 a.m., nearly three hours after the dinner. But as per the post mortem certificate, undigested food was presented in the stomach. Hence, the occurrence said to have taken place at 1.00 a.m., as stated by the prosecution creates doubts. The learned counsel appearing for the appellant cited Judgments of the Hon'ble Supreme Court in SURINDER SINGH Vs. STATE OF PUNJAB reported in [1989 supp (2) SCC 21], MOTI AND OTHERS Vs. STATE OF UP reported in [2003 SCC (Cr1) 1821] and DAULAT RAM Vs. STATE OF PUNJAB reported in [1997 SCC (Cri) 822], in support of his contention that the medical evidence regarding undigested food in the stomach of the deceased created doubt in the prosecution case regarding the time of occurrence. Therefore, the prosecution story is totally unbelievable and hence he prays for allowing this appeal.

9. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that there are three eye witnesses to the occurrence. The parents and a neighbour of the deceased were sleeping together with the deceased in the house and at the time of occurrence, after hearing the noise, P.Ws.1 and 2 chased the accused, but he escaped, and the motive for the murder was also clearly established by the prosecution through P.Ws. 1 to 4. He further submitted that since the occurrence had taken place in the midnight, in a remote village, P.W.1 could not reach the police station immediately and hence he has given complaint only at about 6.00 a.m., and therefore the delay is not fatal to the case of prosecution. Hence, he prays for dismissing the appeal.

10. As per the prosecution case, the occurrence took place in the house of the deceased. It is the consistent evidence of P.Ws.1 to 3 that after finishing the dinner and watching the T.V. Serial, the deceased and P.W.3 were sleeping in the veranda and P.Ws.1 and 2 and their son sleeping near by in the house, and on hearing the noise, both P.Ws.1 and 2 woke up, and they saw the accused running and they also chased him, but the accused ran away from the place. Though the occurrence took place at about 1.00 am., in the night hours, since the accused is close relative of P.Ws.1 and 2, they have known the accused very well. So far as the motive is concerned, it is the evidence of P.Ws.1 to 4 that the accused and the deceased family are close relatives and the accused was compelling the deceased to marry him. P.W.4 is neighbour of the deceased and she spoke about the motive. In her evidence, she has stated that on 07.05.2006, the accused came to the house of the deceased and compelled her to marry him, but she refused, there was a wordy quarrel between the accused and deceased, the accused thrown the T.V. Remote on the deceased and at the time the accused told that if she refused to marry him, he will finish her. At the time of occurrence, P.W.3 was also sleeping with the deceased. At the time of occurrence, on hearing the noise, she wake up and saw the accused running and P.Ws.1 and 2 chased him, they could not catch him. P.Ws.5,6,8 and 9 also spoke about the motive. Hence, from the above evidence it was clearly established that the accused compelled the deceased to marry him, but she refused and hence out of the anger, he committed the above crime and the prosecution has clearly established the motive. The evidence of P.Ws.1 to 3, the eye witness to the occurrence, clearly established that the accused came to the house and attacked the deceased with knife and caused her death and We have no reason to disbelieve the evidence of P.Ws.1 to 3.

11. So far as the delay is concerned, the occurrence said to have taken place at about 1.00 a.m., on 09.05.2006, in a remote village in Gingee Taluk and the complaint was given in the morning at about 6.00 a.m. P.Ws.1 and 2 are rustic village people and there is no material available to show that there is transport facility available from the village to reach the Gingee Town in the night. In the above said circumstances, the delay cannot be a reason to disbelieve their evidence. Apart from that the FIR was registered at 6.00 a.m., and it reached the Magistrate Court at 12.00 a.m., though there was a delay of 6 hours in sending the FIR to the Magistrate Court, the delay alone cannot be a reason to disbelieve the prosecution case.

12. So far as the next argument advanced by the learned counsel appearing for the appellant is that as per the post mortem report, undigested foot particles were found in the stomach of the deceased. The occurrence is said to have taken place in the night hours. It is the evidence of P.Ws.1 and 2

that after having dinner and watching the T.V. Serial, they went to the bed. Since the occurrence taken place in the night hours, being the rustic villagers, they may not know the exact time of taking dinner before the occurrence. Therefore, in our considered view a small discrepancy in the time of occurrence cannot be a ground to disbelieve the prosecution case and the judgment relied on by the learned counsel for the appellant is not applicable to the facts of this case. Hence, the above said arguments also could not be countenanced. Therefore, we are of the opinion that the prosecution has proved the case beyond reasonable doubt and there is no reason to interfere with the judgment of the trial Court.

13. In such circumstances, we find no merit in the appeal and the same fails and consequently it is dismissed. The conviction and sentence passed in S.C.No.192 of 2006 by the learned Ist Additional Sessions Judge, Tindivanam, stands confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Ist Additional District and Sessions Judge
Tindivanam.
- 2.The Inspector of Police,
Gingee Police Station,
Gingee.
- 3.The Public Prosecutor,
High Court,
Madras.
- 4.The Judicial Magistrate Court,
Gingee.
- 5.The Chief Judicial Magistrate,
Villupuram.
- 6.The Principal District and Sessions Judge,
Villupuram.

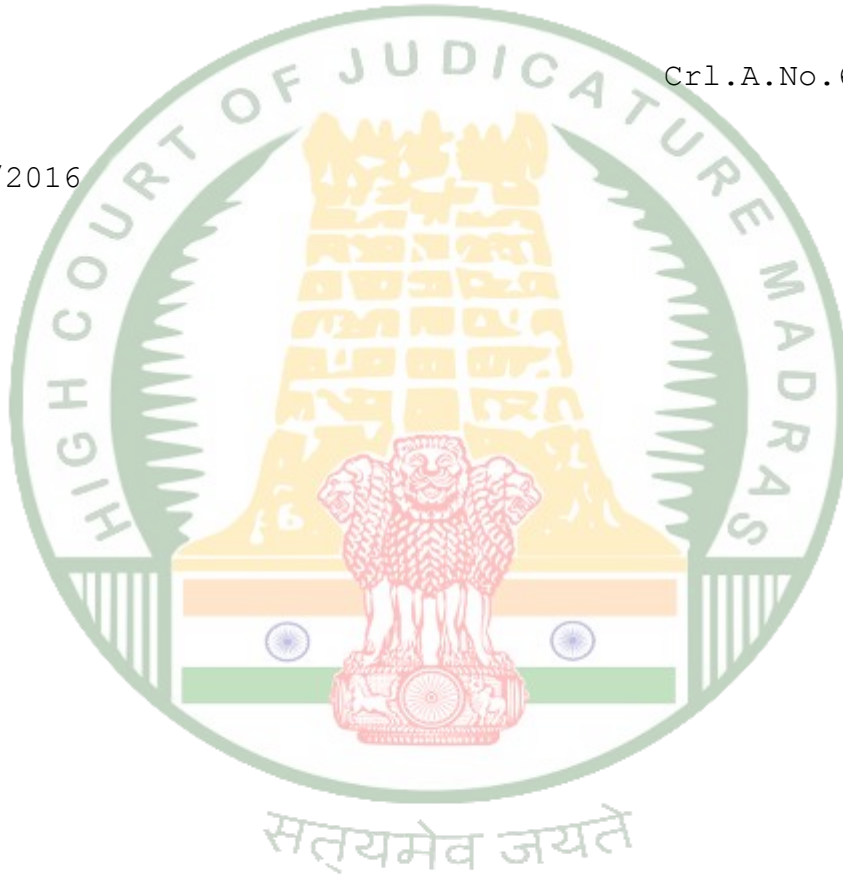
7.The Superintendent,
Central Prison, Cuddalore.

8.The Section Officer,
Criminal Section,
High Court,
Madras (records)

+2cc to Mr.R.Sankarasubbu, Advocate Sr.34817 and 35094

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